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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/542,640

07/19/2005

Juergen Markwart

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7344

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EXAMINER

LOPEZ, FRANK D

ART UNIT

PAPER NUMBER

3745

MAIL DATE

DELIVERY MODE

06/20/2007

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

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## Office Action Summary

Application No.

10/542,640

Applicant(s)

MARKWART, JUERGEN

Examiner

F. Daniel Lopez

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on 19 July 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☐ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1-3, 5-12, 14 and 15 is/are rejected.
- 7) ☐ Claim(s) 4, 13 and 16 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>7/19/05</u> . | 6) <input type="checkbox"/> Other: _____  |

***Election/Restrictions***

This application contains claims directed to more than one species of the generic invention. These species are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1.

The species are as follows: Species I is the brake valve unit of fig 1; Species II is the brake valve unit of fig 2; Species III is the brake valve unit of fig 3; Species IV is the brake valve unit of fig 4; Species V is the brake valve unit of fig 5. The species of fig 2a and 6 are included with species II.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

The claims are deemed to correspond to the species listed above in the following manner: claims 3-5, 13 and 16 correspond to species II; claim 11 corresponds to species V.

The following claim(s) are generic: claims 1, 2, 6-8, 12, 14 and 15 are generic to all species; claim 9 is generic to species III and IV; and claim 10 is generic to species I-IV.

The species listed above do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, the species lack the same or corresponding special technical features for the following reasons: The references used in the 102 rejection below indicates all the common technical features of the above species are known, and therefore not special technical features.

Applicant is required, in reply to this action, to elect a single species to which the claims shall be restricted if no generic claim is finally held to be allowable. The reply must also identify the claims readable on the elected species, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an election.

### ***Specification***

The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed. The title should include the brake valve and the hydrostatic transmission, such as **A brake valve for a hydrostatic transmission**.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 5, 7, 8, 10, 12, 14 and 15 are rejected under 35 U.S.C. § 102(b) as being anticipated by Mangano et al. Mangano et al discloses a hydrostatic transmission control system comprising a traveling direction control valve (32) connecting a hydraulic pump (P) to first or second pump side main lines (26, 28); wherein a symmetrical brake valve unit (B) connects the first and second pump side main lines to first and second motor side main lines (22, 24), respectively, of a hydraulic motor (10), via check valves (between 22B and 22, or between 24b and 24, respectively); wherein the brake valve unit connects one of the first and second motor side main lines to a tank, through a throttle (51, 51'), depending on the pressure in the lines; wherein a brake valve (50) of the brake valve unit is subjected to a brake pressure (via 56, 58) at a first measuring surface opposing a spring force, dependent on pressure in one of the first and second motor side main lines, and via a pilot control valve (52); wherein the pilot control valve is subjected to the pressure in one of the first and second motor side main lines (via 62, 64).

Claims 1, 2, 6-10, 12, 14 and 15 are rejected under 35 U.S.C. § 102(b) as being anticipated by Mann. Mann discloses a hydrostatic transmission control system comprising a traveling direction control valve (14) connecting a hydraulic pump (connected to 13) to first or second pump side main lines (11, 12); wherein a symmetrical brake valve unit (17) connects the first and second pump side main lines to first and second motor side main lines, respectively, of a hydraulic motor (1), via check valves

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(e.g. 30); wherein the brake valve unit connects one of the first and second motor side main lines to a tank, through a throttle, depending on the pressure in the lines; wherein first and second brake valves (28, 29, respectively) of the brake valve unit are subjected to a brake pressure (unnumbered) at a first measuring surface opposing a spring force, dependent on pressure in one of the first and second motor side main lines, and a second pressure (via 32, 33, respectively) at a second measuring surface opposing the spring force, dependent on pressure in one of the first and second pump side main lines.

Claims 1, 7, 11, 14 and 15 are rejected under 35 U.S.C. § 102(b) as being anticipated by Gunter. Gunter discloses a hydrostatic transmission control system comprising a traveling direction control valve (32) connecting a hydraulic pump (34) to first or second pump side main lines (28, 30); wherein a symmetrical brake valve (10) of a brake valve unit connects the first and second pump side main lines to first and second motor side main lines (24, 26), respectively, of a hydraulic motor (12), in parallel; wherein the brake valve connects one of the first and second motor side main lines to a tank, through a throttle, depending on the pressure in the lines; wherein a brake valve is subjected to a brake pressure at a first measuring surface opposing a spring force, dependent on pressure in one of the first and second motor side main lines.

### ***Conclusion***

Claims 4, 13 and 16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dan Lopez whose telephone number is 571-272-4821. The examiner can normally be reached on Monday-Thursday from 6:00 AM -4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ed Look, can be reached on 571-272-4820. The fax number for this group is 571-273-8300. Any inquiry of a general nature should be directed to the Help Desk, whose telephone number is 1-800-PTO-9199.

*/F. Daniel Lopez/*

F. Daniel Lopez  
Primary Examiner  
Art Unit 3745  
June 13, 2007